

Notice of Allowability

Application No.

09/672,043

Examiner

Ayal I Sharon

Applicant(s)

SCHEEL ET AL.

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief Filed on 11/15/04.
2. ☒ The allowed claim(s) is/are 1-14.
3. ☒ The drawings filed on 9/29/2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 8/9/04, 11/22/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Examiner's Notice of Reasons for Allowance

1. The following is an examiner's statement of reasons for allowance. The closest prior art of record is:

- a. Borden, T.L. et al. "Multiple Operating Systems on One Processor Complex." 8204 IBM Systems Journal. Vol.28, No.1. pp.104-122. 1989.

Cited by Applicant in paper #7 - an IDS. (Henceforth referred to as "**Borden**").

- b. IBM Corp., AS/400 Logical Partitions Hardware Planning Guide. © 1999. (Henceforth referred to as "**AS/400**").

2. Examiner finds the following arguments, presented by the Applicants in the Appeal Brief filed on 11/15/2004, to be persuasive (see pp.18-19. The cited paragraphs have been reformatted for clarity):

Claim 1 further recites: "calculating the number of partition processors; wherein the number of partition processors equals the total number of system processors, times the partition workload capacity divided by the system work capacity," which is also not taught or suggested by the hypothetical combination of the references for the reasons argued below.

Thus, in claim 1, the number of partition processors is calculated based, in part, on the partition workload capacity, which was supplied by the user. Once again, this is backwards from Borden, where the user is required to directly specify the processor configuration, which influences how much partition workload capacity would be available. Hence, Borden teaches away from claim 1, which is compelling evidence of non-obviousness.

The AS/400 reference recites at page 9: "Relative logical partition performance = (CPW) (# processors in the logical partition / total # of processors)," and the Examiner argued that it would have been obvious to solve this equation for the number of processors in the logical partition.

Appellant respectfully disagrees because the AS/400 reference describes the aforementioned equation in the context of: "In creating logical partitions, you can assign any number of available processors to a logical partition. You can assign processor as long as you have at least one processor for each logical partition."

Thus, the AS/400 reference describes "you" (the user) assigning processors and then calculating the performance based in part on the number of processors assigned by the user.

In contrast, claim 1 recites that the computerized method calculates "the number of partition processors" based on "the total number of system processors, times the partition workload capacity divided by the system work capacity." The AS/400 reference has no need or motivation to calculate the number of partition processors based on partition workload capacity, as recited in claim 1, because in the AS/400 reference the number of available processors is predetermined by the user.

Thus, analogous to Bolden, as previously argued above, in the AS/400 reference the relationship of partition processors to partition workload capacity is backwards from claim 1.

Thus, the AS/400 reference teaches away from claim 1, which is compelling evidence of non-obviousness.

3. Independent claims 8 and 14 also recite the limitation "calculating the number of partition processors; wherein the number of partition processors equals the total number of system processors, times the partition workload capacity divided by the system work capacity,"
4. Therefore, independent claims 1, 8 and 14, and their dependent claims 2-7 and 9-13 are allowed.
5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ayal I. Sharon whose telephone number is (571) 272-3714. The examiner can normally be reached on Monday through Thursday, and the first Friday of a biweek, 8:30 am – 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached at (571) 272-3716.

Any response to this office action should be faxed to (703) 872-9306 or mailed to:

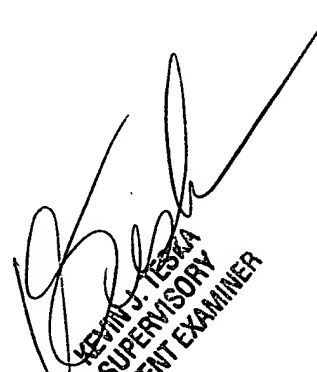
Director of Patents and Trademarks
Washington, DC 20231

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center 2100 Receptionist, whose telephone number is (571) 272-2100.

Ayal I. Sharon

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January 26, 2005


KEVIN J. TESKA
SUPERVISORY
PATENT EXAMINER